* **HIGH COURT OF DELHI : NEW DELHI**

\+ **CS(OS) No.799/2002**

Judgment reserved on: April 18, 2007.

% Judgment delivered on: July 13, 2007

M/s. Carrier Aircon Limited. ..... Plaintiff
Through: Mr. Inder Raj Gill and Mr. Chetan Prabhakar, Advocates

versus

M/s. Champion Sales & Others ..... Defendants
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J

1. Plaintiff company has filed this suit through its attorney under the provisions of Order 37 of CPC seeking summary judgment against the defendants for recovering a sum of Rs.35,17,061.66 along with pendente lite and future interest @ 18% per annum. Summons in the specified forms were issued to the defendants. However defendants could not be served in the ordinary way and ultimately

they have been served by substituted mode by publication in “The Statesman” and despite service of summons by publication, the defenants failed to put in appearance on the date fixed. Matter was proceeded with ex-parte. The documents filed by the plaintiff were exhibited, arguments were advanced by counsel for the plaintiff and order reserved.

Plaintiff's Claim

2. Plaintiff company is duly incorporated under the Companies Act, 1956 having its registered office at Narsinghpur, Kherki Daula Post, Gurgaon, Haryana. It is engaged in the business of manufacturing and supplying air conditioners, split units, chiller units, compressors and other such air conditioning and refrigerating machines. Mr. B. Gururaj, is the duly constituted attorney of the company and is competent to institute and prosecute the instant suit on its behalf.

3. Defendant No. 1, Mr. Anoop Singh is the husband of defendant No. 2, Mrs. Manjit Kaur. Defendant No. 3, M/s. Champion Refrigeration is the sole proprietary firm of defendant No. 1 and defendant Nos. 4 and 5, M/s. Champion Sales are the proprietorship concern of defendant No. 2. The day to day business of these firms is however, managed by defendant No. 1.

4. The defendant No. 1, has been purchasing compressors

from the plaintiff on behalf of defendant No. 3 since 1994. Initially the goods ordered were being supplied to the defendants in Delhi. However, subsequently deliveries were also made to the Mumbai Branch of the defendants.

5. Invoices were raised and delivered alongwith the consignments which carried the various stipulations of the contract including a stipulation as to levy of interest @ 24% on delayed payment, which became due and payable immediately upon delivery. The liability on account of rejection of sales tax certificate by the Taxing Authority was also to be borne by the defendants as per the invoices.

6. Three different running accounts were maintained for the supplies made at Delhi and Mumbai. As on May 25, 2001, the running account of defendant No. 3. Firm, showed a debit balance of Rs.66,135/-. The running account of defendant No. 4 at Delhi showed a debit balance of Rs.20,06,375/- payable to the plaintiff as on 28th June 2001 (which includes the claim of Rs.1,82,772/- towards sales tax liabilities Whereas running account of defendant No. 5 (Mumbai Branch) reflected a debit of Rs.9,71,439.71 as on 4th July 2001.

7. Defendants issued several cheques against the outstanding amount payable to the plaintiff. Details of these cheques are as follows:

S.NO.	DATE	CH.NO.	DRAWN ON	AMOUNT	ON BEHALF OF	SIGNED BY
1.	26.5.00	497453	Corporation Bank.	2,00,000	Defendant No. 4	Defendant No. 2
2.	28.6.00	497454	Corporation Bank.	2,00,000	Defendant No. 4	Defendant No. 2
3.	24.5.00	783489	Punjab National Bank.	37,210	Defendant No. 3	Defendant No. 1
4.	26.5.00	783488	Punjab National Bank.	40,870	Defendant No. 3	Defendant No. 1

8. However, all the above cheques were dishonoured upon presentation for reason of insufficiency of funds. Several letters requesting the defendants to clear the outstanding liability were sent from time to time.

9. Defendant No. 4 failed to submit Form ST-35 for the year 1998-99. Vide its letter dated 15.1.2001, defendant No. 4 was requested to provide the said form but to no avail, due to which the plaintiff had to incur a liability of Rs.1,82,772/-. Hence, a sum of Rs.1,82,772/- has been debited to the account of defendant No. 4.

10. Defendant No. 1 vide letter dated 12.5.2001 informed the plaintiff that he was in the process of arranging the funds to clear all outstanding dues of the plaintiff which he would clear in the next few months. Another acknowledgment was issued on 13.7.2001 by the defendant no.1. On 13th July 2001, the account in relation to supplies made at Mumbai was reconciled and the final statement of accounts

reflecting an outstanding of Rs.9,59,439.71 was agreed to and signed by both the parties.

11. Thereafter, on 5.10.2001, plaintiff called upon the defendants vide legal notice issued through its counsel, to pay a sum of Rs.29,65,841.71 (Twenty Nine Lakhs sixty five thousands eight hundred fourty one and paise seventy one only) alongwith interest @ 24% per annum within 15 days of the receipt of demand notice.

12. At the time of institution of the suit a sum of Rs.30,31,949.71 along with interest @ 24% being Rs.4,85,111.95 was due and payable. Thus, a sum of Rs.35,17,061.66 is due and payable by the defendant.

DECISION AND REASONS.

13. I have perused the averments made in the plaint and the documents filed on record which have been exhibited as Annexure P-1 to P-16.

14. The plaintiff has placed on record copies of its Articles and Memorandum of Association and the certificate of incorporation as well as copy of the special power of attorney in favour of B.Gururaj, General Manager, Legal and Company Secretary inter alia authorising him to institute legal proceedings, sign and verify vakalatnamas, plaints and other related documents on behalf of the plaintiff

company. Since there is no opposition to the suit and no objection has been taken to either of these documents.

15. The original statement of accounts maintained by the plaintiff in respect of the defendants are exhibits P-1 to P-3 and corroborate the stand taken by the plaintiff with regard to the outstanding dues owed to the plaintiff as stated in para 6 hereinabove. Exhibit P-7 dated 30.12.2000 is a letter issued by M/s. Champion Sales, New Delhi, i.e defendant no.4 acknowledging liability to the tune of Rs.18,25,901/-. Exhibit P-8 is a letter written by the plaintiff on 15.1.2001 to M/s. Champion Sales, defendant no.4 requiring the said defendant to furnish the sales tax forms, failing which the said defendant was to be held responsible for payment of sales tax amount of Rs.1,82,772/-. Exhibit P-9 is another communication of the plaintiff to M/s. Champion Sales, defendant no.4 demanding outstanding payments and sales tax forms. Exhibit P-10 is a communication from defendant no.4 to the plaintiff sent on 12.5.2001 stating that it is in the process of arranging funds to meet the outstanding liabilities towards supply of compressors by the plaintiff, and that the payment of Rs. 5 lakhs would be made by the end of the month and the balance payment of Rs.15 lakhs would be cleared in the months of June and July. Exhibit P-11 is another letter issued by defendant no.4 to the plaintiff, inter alia, confirming their liability to the tune of Rs.18.25 lakhs on account of compressor sales and Rs.66,135/- in the account

of Champion Refrigeration company i.e. defendant no.3 and representing that the defendants would pay the amounts as soon as they are able to dispose of their property. Exhibit P-13 dated 13.7.2001 is another acknowledgment of defendant no.5, acknowledging outstanding liability of Rs.9,34,439.71 and undertaking to pay the sum as soon as their property is sold.

16. The legal notice issued on behalf of the plaintiff dated 5th October, 2001 is also placed on record along with acknowledgment cards and postal receipts. One sealed envelope addressed by the plaintiff's counsel to M/s. Champion Sales returned with the remark 'left' has also been filed in original on record.

17. The plaintiff has also filed the list of pending ST 35 forms of a total invoice value of Rs.19,24,885 on the basis of which the plaintiff claims the amount of Rs.1,82772/-. The assessment order dated 31.3.2001 for the year 1998-1999 as well as the Sales Tax payment challan of Rs.2,39,140/- has also been filed on record. The assessment order shows that the plaintiffs surrendered sales of Rs.19,24,885 which corresponds with the total invoice value of the 35 ST forms which the defendants failed to deliver to the plaintiff. Accordingly the plaintiff was taxed on the said sales. The plaintiff has also filed on record Exhibits P-14, P-15 and P-16, their office copies of the invoices whereby the goods had been supplied to the defendants.

18. Since the suit is based on a written contract for the recovery of a fixed sum of money/debt and no relief which does not fall within the ambit of order 37 CPC has been claimed in the plaint, and the defendant has failed to enter appearance within the time stipulated for that purpose, the allegations in the plaint are deemed to be admitted and the plaintiff is entitled to a decree in his favour for the amount claimed. [See AIR 1998 Del 183; 2002 AIHC 238 (Del)].

19. In my view the allegations in the plaint which are deemed to be admitted, sufficiently disclose cause of action against the defendants to entitle the plaintiff to a decree as prayed for.

20. In this view of the matter, defendant No. 1 and 3 are liable to pay a sum of Rs.66,135/- along with pre-suit and pendentelite interest @ 12% per annum on the said amount from 25.5.2001 onwards. Defendant Nos. 2, 4 and 5 are liable to pay a sum of Rs.29,65,814.71 (Rs.20,06,375/- + 9,59,439.71) along with pre suit and pendentelite interest @ 12% per annum on the said amount from 13.7.2001 onwards. A decree be drawn accordingly.

21. Since, the transaction is commercial in nature, I deem it appropriate to grant interest @ 12% on the decreetal amount from the date of the decree till the realisation thereof. The plaintiff shall be entitled to costs of Rs.36,700/- being the court fee affixed on the plaint.

(VIPIN SANGHI)
JUDGE

July 13, 2007
P.K. BABBAR